

HOUSE BILL No. 1802

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-38-6.5.

Synopsis: Expungement of conviction records. Allows a sentencing court to expunge the records of a person's conviction if at least five years have passed since the person: (1) completed the person's sentence; and (2) satisfied any other obligations imposed on the person as a part of the sentence.

Effective: July 1, 2007.

Porter

January 26, 2007, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1802

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-38-6.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]:

4 **Chapter 6.5. Expungement of Conviction Records**

5 **Sec. 1. This chapter applies to all records, including juvenile**
6 **records, created as a result of allegations that a person committed**
7 **a misdemeanor or felony.**

8 **Sec. 2. At least five (5) years after a person completes the**
9 **person's sentence and satisfies any other obligations imposed on**
10 **the person as a part of the sentence, the person may petition a**
11 **sentencing court to remove records concerning the person's**
12 **involvement in criminal or juvenile court proceedings from:**

13 (1) a court's files;

14 (2) the files of the department of correction; and

15 (3) the files of any other person who provided treatment or
16 services to the petitioning person under a court order.

17 **Sec. 3. In determining whether to grant a petition under this**

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chapter, the court may consider the following:

- (1) Whether the person has been rehabilitated to the court's satisfaction.
- (2) Any other mitigating factors, including the following:
 - (A) Job performance.
 - (B) Job retention.
 - (C) Community service.
 - (D) Fulfillment of family and child support obligations.
 - (E) Completion of restitution to the victim.

Sec. 4. If the court grants a petition under this chapter, the court shall do the following:

- (1) Order:
 - (A) the department of correction; and
 - (B) each:
 - (i) law enforcement agency; and
 - (ii) other person;
 that incarcerated, provided treatment for, or provided other services to the person under an order of the court; to prohibit the release of the person's records or information in the person's records to anyone without a court order.
- (2) Order any:
 - (A) state;
 - (B) regional; or
 - (C) local;
 central repository for criminal history information to send the person's records to the court.
- (3) Seal any court records related to:
 - (A) the allegation on which a misdemeanor or felony conviction referred to in section 1 of this chapter was based; and
 - (B) any proceeding related to the allegation.
- (4) Notify the clerk of the supreme court to seal any records in the clerk's possession concerning:
 - (A) the allegation described in subdivision (3); or
 - (B) any proceeding related to the allegation;
 if an appeal was taken.

Sec. 5. The following apply if a petition is granted under this chapter:

- (1) Information concerning the person's arrest or conviction may not be placed or retained in any state central repository for criminal history information.
- (2) The records of:

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- (A) the sentencing court;
- (B) a juvenile court;
- (C) a court of appeals; and
- (D) the supreme court;

concerning the person shall be permanently sealed. Other records concerning the person may be given to the person or destroyed.

Sec. 6. (a) If a person whose records are expunged under this chapter brings a civil action that might be defended with the contents of the records, the defendant is presumed to have a complete defense to the action.

(b) For the plaintiff to recover in an action described in subsection (a), the plaintiff must show that the contents of the expunged records would not exonerate the defendant.

(c) In an action described in subsection (a), the plaintiff may be required to state under oath whether:

- (1) the plaintiff had records in the criminal justice system; and
- (2) those records were expunged.

(d) In an action described in subsection (a), if the plaintiff denies the existence of the records, the defendant may prove the existence of the records in any manner compatible with the law of evidence.

Sec. 7. If the court grants a petition under this chapter, the person shall be treated for all purposes as if the person had not been arrested for or convicted of the misdemeanor or felony recorded in the expunged records.

SECTION 2. [EFFECTIVE JULY 1, 2007] IC 35-38-6.5, as added by this act, applies to all felonies and misdemeanors regardless of when the offense was committed.

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